

APPENDIX 4.

EXECUTIVE VETOES FILED WITH THE SECRETARY OF STATE AFTER ADJOURNMENT OF THE REGULAR SESSION OF THE 29TH LEG- ISLATURE.

(It is through the kindness and courtesy of Mr. O. K. Shannon, Secretary of State, that official copies of these documents have been obtained, and they are published in the appendix to the Journal for public information, to make a permanent record of same and to complete the history of bills.)

HOUSE BILL NO. 563.

Executive Office,
Austin, Texas, May 3, 1905.

To the Secretary of State:

I disapprove and transmit herewith House Bill No. 563, entitled "An Act to provide for the incorporation of corporate bodies with banking and discounting privileges, prescribing the liabilities of stockholders in same, providing for the regulation of such corporate bodies, and the supervision thereof by creating the office of Superintendent of Banking, by attaching the same to the office of the Commissioner of Agriculture, Insurance, Statistics and History, and prohibiting foreign corporations with such powers from doing business in this State and to provide penalties for the violation of this Act."

I give notice and proclaim that I object to this bill for the reasons so forcefully stated in the subjoined opinion of the Attorney General and which is made a part hereof, marked "Exhibit A." I fully concur in the conclusions reached by him. I believe the bill to be unconstitutional. It is unnecessary to discuss any additional objections, if such there be, to its becoming a law. For the reasons stated, I veto this bill.

S. W. T. LANHAM,
Governor.

Attorney General's Department,
State of Texas,

Austin, Texas, May 2, 1905.

Hon. S. W. T. Lanham, Governor,
Capitol.

Sir: I beg to return you herewith House Bill No. 563 which is an Act

entitled "An Act to provide for the incorporation of corporate bodies, with banking and discounting privileges, prescribing the liabilities of stockholders in same, providing for the regulation of such corporate bodies, and the supervision thereof by creating the office of Superintendent of Banking by attaching the same to the office of the Commissioner of Agriculture, Insurance, Statistics and History, and prohibiting foreign corporations with such powers from doing business in this State, and to provide penalties for violation of this Act."

I beg to report that in my opinion this Act is in violation of Section 35 of Article 3 of the Constitution, in that much of the subject of the Act is not expressed in its title, and in violation of Section 40 of Article 16 in that it purposes to confer upon one person two civil offices of emolument.

Section 35 of Article 3.

1. Section 35 of Article 3 of the Constitution provides: "No bill (except general appropriation bills which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject which shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed."

The subject of the bill as expressed in its title, is to provide for the incorporation of corporate bodies with banking and discounting privileges. The subject of the bill as disclosed by the bill itself, is to provide for the incorporation of banks of deposit or discount, or both, including savings banks and of trust companies, which latter may or may not have banking and discounting privileges.

Section 1 of the Act provides for the incorporation of banks of deposit or discount, or of banks of deposit and discount; section 13 provides for the incorporation of savings banks. Section 8 authorizes the incorporation of trust companies by that name. The 7th subdivision of this section requires the articles of agreement to set out the purposes for which the association is formed, "which shall include any or all of the powers set out in Section 11 hereof and none other."

Section 11 reads: "Corporations may be created under Section 9 hereof for any one or more of the following purposes."

This section contains 12 subdivisions setting forth the purposes for which trust companies may be formed. These include the power to act as trustee under any mortgage or bond issued by any municipality, etc., (Sub. 4); to accept and execute trusts for married women, (Sub. 5); to act as guardian, receiver or trustee of the estate of any minor, (Sub. 6); to take, accept and execute all such legal trusts as may be granted or confided to them by any court of record, etc., (Sub. 7); to take, accept and execute trust generally, (Sub. 8); to purchase, invest in, guarantee and sell stocks, bills of exchange, bonds and mortgages, and other securities, and to issue its bonds or obligations against moneys or securities borrowed or received on deposit, or for investment, (Sub. 9); to act as executor or administrator of the estate of any infant, insane person, idiot, or habitual drunkard, or trustee for any convict in the penitentiary, (Sub. 10); to exercise the powers and possess; the privileges conferred on banks by section 3 of the act, (Sub. 11); and to guarantee the fidelity and diligent performance of duty of persons or corporations in certain cases; to guarantee or become security on any bond given by any person or corporation against loss or damage by reason of any risk assumed by insuring the fidelity or diligent performance of duty of any such person or corporation, or by guaranteeing or becoming surety on any bond, (Sub. 12).

It is clear that under the provisions of section 8 of this Act, a trust company can be incorporated for all of the purposes specified in subdivision 1 to 12 of section 11, or for any one of the purposes specified in that section. It may include, among the purposes of its organization, the powers and privileges conferred on banks by the Act, but it need not do so and may incorporate for any other purpose specified in that section. Subdivisions 4, 6, 7, 8, 9, 10 and 12 are wholly or in part, foreign to the subject stated in the caption which is, "to provide for the incorporation of corporate bodies with banking and discounting privileges." The bill, in fact, undertakes to provide for the incorporation of two distinct classes of corporations, (1) banks of deposit and discount, or both discount and deposit, which includes savings banks, and (2) trust companies. The bill, it is true, authorizes banks to avail themselves of the powers incl-

dent to trust companies, and authorizes trust companies to include among the purposes for which they are incorporated, the powers and privileges conferred upon banks, but as I have said, the bill does provide for incorporation of a corporate body, viz: a trust company, without banking and discounting privileges, and with privileges wholly foreign to and unconnected with banking or discounting.

2. Section 35 of Article 3 of the Constitution concludes: "But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed." I therefore, proceed to discuss the caption as though the bill contained no provisions for the incorporation of trust companies.

The caption declares the subject of the act to be "to provide for the incorporation of corporate bodies with banking and discounting privileges."

I quote from the 5th Vol. of Cyclo-pedia of Law and Procedure, page 432: "Banks are of three kinds; banks of deposit, which includes savings banks, and all others which receive money on deposit; banks of discount, being those which loan money on collateral or by means of discount or commercial paper; and banks of circulation which issue bank notes payable to bearer. But the same banks generally perform all of these several operations.

"Banking is defined as the business or employment of a banker, the business of establishing a common fund for lending money, discounting notes, issuing bills, receiving deposits, collecting the money or notes deposited, negotiating bills of exchange."

Discount is often used in banking to designate or signify a mode of loaning money with the right to take interest in advance; advancing a sum of money less than that expressed in the note on the payee's transferring the title to the same to the bank, etc. (Sec. 14, Cyc. 299.)

Section 63 of the Act authorizes any corporation hereafter to be formed for any of the purposes contemplated by the Act to extend its business to any other purposes authorized by the Act, and section 66 expressly authorizes any company organized under the provisions of the Act upon depositing \$50,000 in cash, or securities named, with the State Treasurer, to qualify as curator, guardian, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depository of money in court, without giving bond or such, and to become sole guarantor or surety upon any bond required to be given under the law of this State.

Therefore, a corporation incorporated under section 1 of the Act as a bank of deposit and discount, may, by complying with section 66 of the Act, acquire the right to act as executor, administrator, guardian, etc., and guarantor or surety, and, subject to the restriction expressed in section 66, may under section 63, acquire the right to exercise any other of the powers enumerated in section 11 of the Act which relates to the purpose for which trust companies may be incorporated. It needs no argument that these purposes, however, intimately connected in their exercise, are not embraced within the terms "Banking and discounting privileges."

Neither banking nor discounting means, nor includes within its meaning, acting as guardian, executor or administrator, or administering trusts or guaranteeing the fidelity of persons or corporations, or indeed any of the matters expressed in subdivisions 4, 5, 6, 7, 8, 10, 12 and the greater part of subdivision 9 of section 11 of the act.

In the case of Adams & Wicks vs. Water Company, 86 Texas, 485, the Supreme Court had under consideration an Act of which the caption stated the subject to be the regulation of condemnation of property in cities and towns "for the purpose of opening, widening or changing public streets or avenues, or alleys, or for water mains or sewers." In the Act provision was made for condemnation of grounds for reservoirs or stand-pipes." The court held that these latter subjects were not expressed in the title. I quote from the opinion in that case which was written by Chief Justice Gaines, then Associate Justice:

"The matter of condemning property for reservoirs is not named in the title to the Act, nor is it, as we think, expressed by the mention of "water mains." The former term is not comprehended within the latter. They are in no respect synonymous; and the things they represent, though intimately connected in their actual use, are distinctly different. Their relation to each other and their connection in ordinary use—the necessity of one to the other which may exist under certain circumstances—may evince the intention of the Legislature to make the law applicable to both. But it is not with a question of intention we deal. The inquiry is not what the Legislature intended to embrace in the title, but what by the terms employed, it did in fact embrace.

"The purpose of the Constitutional requirement is to give notice through the title of the bill, not only to members of the Legislature but to the citizens at large, of the subject matter of

the projected law, and thereby to prevent the surreptitious passage of a law upon one subject under the guise of a title which expresses another. If the subject, as expressed in the title, had been to authorize the condemnation of property for water works, it would have embraced every subject embodied in the Act in relation to that matter, but the maxim that the mention of one thing is the exclusion of another, is not only a legal but a logical rule; and it applies with peculiar force to the question of notice. The expression of a purpose to confer authority by an Act of the Legislature to give the power to condemn property for water mains, not only fails to give notice of the purpose to confer such power in reference to reservoirs, but is calculated, on the contrary to lead to the belief that the latter purpose is not intended."

The language of Justice Gaines in this case, is, I think, peculiarly applicable to the present bill, and is decisive of both of the questions which I have discussed.

3. Sections 75 and 76 of the Act are not even attempted to be expressed in the caption. Briefly stated, 75 authorizes any bank, trust company, savings and safe deposit companies organized under the general or any special law of the State, under certain conditions, to accept the provisions of this Act with like effect as if it had been originally incorporated under the provisions of this Act. Section 76 imposes certain restrictions upon certain corporations named with respect to their corporate names, and section 78 is similar to section 75. I do not discuss these sections because their invalidity alone would not go to the validity of the entire bill.

Section 40 of Article 16.

This provision of the Constitution is as follows: "No person shall hold or exercise at the same time, more than one civil office of emolument, except that of justice of the peace, county commissioner, notary public, and post master, unless otherwise specially provided herein."

So much of the caption as relates to this question is as follows: "Providing for the regulation of such corporate bodies and the supervision thereof by creating the office of Superintendent of Banking by attaching the same to the office of Commissioner of Agriculture, Insurance, Statistics and History."

Section 38 of the Act establishes a banking department charged with the execution of the law relating to financial corporations mentioned in the Act. The Commissioner of Agriculture, In-

Insurance, Statistics and History is made the chief officer of such department, and as such, shall be known as the Superintendent of Banking; he shall receive "as additional salary or compensation for his ex officio duties as such Superintendent, the sum of \$500.00 per annum"; he is required to take and subscribe the constitutional oath of office and to execute a bond "conditioned upon the faithful discharge of his duties as Superintendent of Banking." The Secretary of State shall provide the Superintendent of Banking with an official seal, and every paper executed by him as such Superintendent, in pursuance of any authority conferred on him by law, sealed with his seal of office, shall be received in evidence, etc.

It was doubtless the intention of the Legislature to impose upon the incumbent of the office of Commissioner of Agriculture, Insurance, Statistics and History, the duties prescribed by the Act as Superintendent of Banking, but notwithstanding the use of the words "ex officio duties," I am of the opinion that section 38 would be construed as creating an office known as Superintendent of Banking. It requires that the Superintendent of Banking shall take the constitutional oath of office, shall give a bond conditioned for the faithful discharge of his duties, and shall have an official seal with which to authenticate his official acts, and he receives a compensation as Superintendent of Banking. These are all of the indicia of a civil office of emolument. Instead of providing for the appointment or election of a person to the office, the Legislature has provided that the Commissioner of Agriculture, Insurance, Statistics and History, shall also be Superintendent of Banking. I believe this is obnoxious to the Constitutional provisions referred to.

If there be a doubt of the proper construction of section 38 of the Act, the caption of the bill expressly states that it provides for "creating the office of Superintendent of Banking by attaching the same to the office of Commissioner of Agriculture, Insurance, Statistics and History." As said by Justice Gaines in the case above quoted from, we do not deal with a question of intention. "The inquiry is not what the Legislature intended to embrace in the title, but what, by the terms employed, it did in fact embrace." The language quoted from the caption could hardly be construed to mean anything else than that the bill was designed to create an office of Superintendent of Banking. If it was intended merely to require the Commissioner of Agriculture, etc., in addition to his present duties, to discharge additional duties under the title of

Superintendent of Banking, apt words were not used for the purpose.
H. V. DAVIDSON,
Attorney General.